

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

**EVANGELINA FUENTEZ**

Applicant for Registered Nurse License

Respondent

Case No. 2013 -30

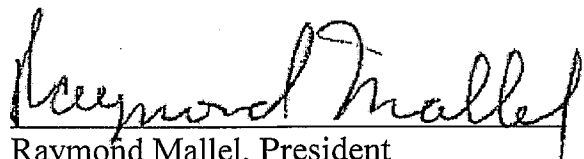
OAH No. 2012070842

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **January 15, 2013**.

IT IS SO ORDERED **December 15, 2012**.



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 KATHERINE MESSANA  
Deputy Attorney General  
4 State Bar No. 272953  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

12 **EVANGELINA FUENTEZ**

13 2146 Fairway Glen Ave.  
14 Santa Clara, CA 95054

15 Applicant for Registered Nurse License

16 Respondent.

Case No. 2013-30

OAH No. 2012070842

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

17  
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
19 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer  
20 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order  
21 which will be submitted to the Board for approval and adoption as the final disposition of the  
22 Statement of Issues.

23 **PARTIES**

24 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Executive Officer of the Board  
25 of Registered Nursing. She brought this action solely in her official capacity and is represented in  
26 this matter by Kamala D. Harris, Attorney General of the State of California, by Katherine  
27 Messana, Deputy Attorney General.

1           2.     Respondent Evangelina Fuentez ("Respondent") is represented in this proceeding by  
2 attorney Paul Chan, whose address is:

3 Law Offices of Paul Chan  
4 400 Capitol Mall, Suite 2545  
5 Sacramento, CA 95814

6           3.     On or about December 16, 2011, Respondent filed an application dated November 11,  
7 2011, with the Board of Registered Nursing to obtain a Registered Nurse License.

8                                   **JURISDICTION**

9           4.     Statement of Issues No. 2013-30 was filed before the Board of Registered Nursing  
10 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The  
11 Statement of Issues and all other statutorily required documents were properly served on  
12 Respondent on July 11, 2012.

13           5.     A copy of Statement of Issues No. 2013-30 is attached as **Exhibit A** and incorporated  
14 herein by reference.

15                                   **ADVISEMENT AND WAIVERS**

16           6.     Respondent has carefully read, fully discussed with counsel, and understands the  
17 charges and allegations in Statement of Issues No. 2013-30. Respondent has also carefully read,  
18 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
19 Disciplinary Order.

20           7.     Respondent is fully aware of her legal rights in this matter, including the right to a  
21 hearing on the charges and allegations in the Statement of Issues; the right to be represented by  
22 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the  
23 right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas  
24 to compel the attendance of witnesses and the production of documents; the right to  
25 reconsideration and court review of an adverse decision; and all other rights accorded by the  
26 California Administrative Procedure Act and other applicable laws.

27           8.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
28 every right set forth above.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED

The application of Respondent Evangelina Fuentes for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of three (3) years on the following conditions:

**Severability Clause.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

**Criminal Court Orders:** If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no

1 more than 15 days of any address change and shall at all times maintain an active, current license  
2 status with the Board, including during any period of suspension.

3 Upon successful completion of probation, Respondent's license shall be fully restored.

4 3. **Report in Person.** Respondent, during the period of probation, shall appear in  
5 person at interviews/meetings as directed by the Board or its designated representatives.

6 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or  
7 practice as a registered nurse outside of California shall not apply toward a reduction of this  
8 probation time period. Respondent's probation is tolled, if and when she resides outside of  
9 California. Respondent must provide written notice to the Board within 15 days of any change of  
10 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
11 returning to practice in this state.

12 Respondent shall provide a list of all states and territories where she has ever been licensed  
13 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide  
14 information regarding the status of each license and any changes in such license status during the  
15 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing  
16 license during the term of probation.

17 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit  
18 or cause to be submitted such written reports/declarations and verification of actions under  
19 penalty of perjury, as required by the Board. These reports/declarations shall contain statements  
20 relative to Respondent's compliance with all the conditions of the Board's Probation Program.  
21 Respondent shall immediately execute all release of information forms as may be required by the  
22 Board or its representatives.

23 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every  
24 state and territory in which she has a registered nurse license.

25 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall  
26 engage in the practice of registered nursing in California for a minimum of 24 hours per week for  
27 6 consecutive months or as determined by the Board.

28 For purposes of compliance with the section, "engage in the practice of registered nursing"

1 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
2 non-direct patient care position that requires licensure as a registered nurse.

3 The Board may require that advanced practice nurses engage in advanced practice nursing  
4 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

5 If Respondent has not complied with this condition during the probationary term, and  
6 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
7 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
8 extension of Respondent's probation period up to one year without further hearing in order to  
9 comply with this condition. During the one year extension, all original conditions of probation  
10 shall apply.

11 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain  
12 prior approval from the Board before commencing or continuing any employment, paid or  
13 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
14 performance evaluations and other employment related reports as a registered nurse upon request  
15 of the Board.

16 Respondent shall provide a copy of this Decision to her employer and immediate  
17 supervisors prior to commencement of any nursing or other health care related employment.

18 In addition to the above, Respondent shall notify the Board in writing within seventy-two  
19 (72) hours after she obtains any nursing or other health care related employment. Respondent  
20 shall notify the Board in writing within seventy-two (72) hours after she is terminated or  
21 separated, regardless of cause, from any nursing, or other health care related employment with a  
22 full explanation of the circumstances surrounding the termination or separation.

23 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding  
24 Respondent's level of supervision and/or collaboration before commencing or continuing any  
25 employment as a registered nurse, or education and training that includes patient care.

26 Respondent shall practice only under the direct supervision of a registered nurse in good  
27 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods  
28 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are

1 approved.

2 Respondent's level of supervision and/or collaboration may include, but is not limited to the  
3 following:

4 (a) Maximum - The individual providing supervision and/or collaboration is present in  
5 the patient care area or in any other work setting at all times.

6 (b) Moderate - The individual providing supervision and/or collaboration is in the patient  
7 care unit or in any other work setting at least half the hours Respondent works.

8 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
9 person communication with Respondent at least twice during each shift worked.

10 (d) Home Health Care - If Respondent is approved to work in the home health care  
11 setting, the individual providing supervision and/or collaboration shall have person-to-person  
12 communication with Respondent as required by the Board each work day. Respondent shall  
13 maintain telephone or other telecommunication contact with the individual providing supervision  
14 and/or collaboration as required by the Board during each work day. The individual providing  
15 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
16 patients' homes visited by Respondent with or without Respondent present.

17 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any  
18 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,  
19 or for an in-house nursing pool.

20 Respondent shall not work for a licensed home health agency as a visiting nurse unless the  
21 registered nursing supervision and other protections for home visits have been approved by the  
22 Board. Respondent shall not work in any other registered nursing occupation where home visits  
23 are required.

24 Respondent shall not work in any health care setting as a supervisor of registered nurses.  
25 The Board may additionally restrict Respondent from supervising licensed vocational nurses  
26 and/or unlicensed assistive personnel on a case-by-case basis.

27 Respondent shall not work as a faculty member in an approved school of nursing or as an  
28 instructor in a Board approved continuing education program.



1 Respondent shall work only on a regularly assigned, identified and predetermined  
2 worksite(s) and shall not work in a float capacity.

3 If Respondent is working or intends to work in excess of 40 hours per week, the Board may  
4 request documentation to determine whether there should be restrictions on the hours of work.

5 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and  
6 successfully complete course(s) relevant to the practice of registered nursing no later than six  
7 months prior to the end of her probationary term.

8 Respondent shall obtain prior approval from the Board before enrolling in the course(s).  
9 Respondent shall submit to the Board the original transcripts or certificates of completion for the  
10 above required course(s). The Board shall return the original documents to Respondent after  
11 photocopying them for its records.

12 11. **Violation of Probation.** If Respondent violates the conditions of her probation, the  
13 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order  
14 and impose the stayed discipline (revocation/suspension) of Respondent's license.

15 If during the period of probation, an accusation or petition to revoke probation has been  
16 filed against Respondent's license or the Attorney General's Office has been requested to prepare  
17 an accusation or petition to revoke probation against Respondent's license, the probationary  
18 period shall automatically be extended and shall not expire until the accusation or petition has  
19 been acted upon by the Board.

20 12. **License Surrender.** During Respondent's term of probation, if she ceases practicing  
21 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,  
22 Respondent may surrender her license to the Board. The Board reserves the right to evaluate  
23 Respondent's request and to exercise its discretion whether to grant the request, or to take any  
24 other action deemed appropriate and reasonable under the circumstances, without further hearing.  
25 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be  
26 subject to the conditions of probation.

27 Surrender of Respondent's license shall be considered a disciplinary action and shall  
28 become a part of Respondent's license history with the Board. A registered nurse whose license

1 has been surrendered may petition the Board for reinstatement no sooner than the following  
2 minimum periods from the effective date of the disciplinary decision:

3 (1) Two years for reinstatement of a license that was surrendered for any reason other  
4 than a mental or physical illness; or

5 (2) One year for a license surrendered for a mental or physical illness.

6 13. **Physical Examination.** Within 45 days of the effective date of this Decision,  
7 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician  
8 assistant, who is approved by the Board before the assessment is performed, submit an  
9 assessment of the Respondent's physical condition and capability to perform the duties of a  
10 registered nurse, including a determination as set forth below in the condition titled "Rule-Out  
11 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to  
12 the Board. If medically determined, a recommended treatment program will be instituted and  
13 followed by the Respondent with the physician, nurse practitioner, or physician assistant  
14 providing written reports to the Board on forms provided by the Board.

15 If Respondent is determined to be unable to practice safely as a registered nurse, the  
16 licensed physician, nurse practitioner, or physician assistant making this determination shall  
17 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
18 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall  
19 immediately cease practice and shall not resume practice until notified by the Board. During this  
20 period of suspension, Respondent shall not engage in any practice for which a license issued by  
21 the Board is required until the Board has notified Respondent that a medical determination  
22 permits Respondent to resume practice. This period of suspension will not apply to the reduction  
23 of this probationary time period.

24 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
25 requirement, Respondent shall immediately cease practice and shall not resume practice until  
26 notified by the Board. This period of suspension will not apply to the reduction of this  
27 probationary time period. The Board may waive or postpone this suspension only if significant,  
28 documented evidence of mitigation is provided. Such evidence must establish good faith efforts

1 by Respondent to obtain the assessment, and a specific date for compliance must be provided.

2 Only one such waiver or extension may be permitted.

3       **14. Mental Health Examination.** Respondent shall, within 45 days of the effective date  
4 of this Decision, have a mental health examination including psychological testing as appropriate  
5 to determine her capability to perform the duties of a registered nurse, including a determination  
6 as set forth below in the condition titled "Rule-Out Substance Abuse Assessment." The  
7 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
8 practitioner approved by the Board. The examining mental health practitioner will submit a  
9 written report of that assessment and recommendations to the Board. All costs are the  
10 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
11 result of the mental health examination will be instituted and followed by Respondent.

12       If Respondent is determined to be unable to practice safely as a registered nurse, the  
13 licensed mental health care practitioner making this determination shall immediately notify the  
14 Board and Respondent by telephone, and the Board shall request that the Attorney General's  
15 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease  
16 practice and may not resume practice until notified by the Board. During this period of  
17 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
18 is required, until the Board has notified Respondent that a mental health determination permits  
19 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
20 probationary time period.

21       If Respondent fails to have the above assessment submitted to the Board within the 45-day  
22 requirement, Respondent shall immediately cease practice and shall not resume practice until  
23 notified by the Board. This period of suspension will not apply to the reduction of this  
24 probationary time period. The Board may waive or postpone this suspension only if significant,  
25 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
26 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
27 Only one such waiver or extension may be permitted.

28       **15. Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical

1 and/or mental health examination determines that the respondent is dependent upon drugs or  
2 alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol  
3 dependence in remission), that might reasonably affect the safe practice of nursing, then the  
4 respondent must further comply with the following additional terms and conditions of probation:

5 **A. Participate in Treatment/Rehabilitation Program for Chemical**

6 **Dependence.** Respondent, at her expense, shall successfully complete during the  
7 probationary period or shall have successfully completed prior to commencement  
8 of probation a Board-approved treatment/rehabilitation program of at least six  
9 months duration. As required, reports shall be submitted by the program on forms  
10 provided by the Board. If Respondent has not completed a Board-approved  
11 treatment/rehabilitation program prior to commencement of probation,  
12 Respondent, within 45 days from the effective date of the decision, shall be  
13 enrolled in a program. If a program is not successfully completed within the first  
14 nine months of probation, the Board shall consider Respondent in violation of  
15 probation.

16 Based on Board recommendation, each week Respondent shall be required  
17 to attend at least one, but no more than five 12-step recovery meetings or  
18 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse  
19 support group as approved and directed by the Board. If a nurse support group is  
20 not available, an additional 12-step meeting or equivalent shall be added.  
21 Respondent shall submit dated and signed documentation confirming such  
22 attendance to the Board during the entire period of probation. Respondent shall  
23 continue with the recovery plan recommended by the treatment/rehabilitation  
24 program or a licensed mental health examiner and/or other ongoing recovery  
25 groups.

26 **B. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent  
27 shall completely abstain from the possession, injection or consumption by any  
28 route of all controlled substances and all psychotropic (mood altering) drugs,

1 including alcohol, except when the same are ordered by a health care professional  
2 legally authorized to do so as part of documented medical treatment. Respondent  
3 shall have sent to the Board, in writing and within fourteen (14) days, by the  
4 prescribing health professional, a report identifying the medication, dosage, the  
5 date the medication was prescribed, the Respondent's prognosis, the date the  
6 medication will no longer be required, and the effect on the recovery plan, if  
7 appropriate.

8 Respondent shall identify for the Board a single physician, nurse  
9 practitioner or physician assistant who shall be aware of Respondent's history of  
10 substance abuse and will coordinate and monitor any prescriptions for Respondent  
11 for dangerous drugs, controlled substances or mood-altering drugs. The  
12 coordinating physician, nurse practitioner, or physician assistant shall report to the  
13 Board on a quarterly basis Respondent's compliance with this condition. If any  
14 substances considered addictive have been prescribed, the report shall identify a  
15 program for the time limited use of any such substances.

16 The Board may require the single coordinating physician, nurse  
17 practitioner, or physician assistant to be a specialist in addictive medicine, or to  
18 consult with a specialist in addictive medicine.

19 **C. Submit to Tests and Samples.** Respondent, at her expense, shall  
20 participate in a random, biological fluid testing or a drug screening program which  
21 the Board approves. The length of time and frequency will be subject to approval  
22 by the Board. Respondent is responsible for keeping the Board informed of  
23 Respondent's current telephone number at all times. Respondent shall also ensure  
24 that messages may be left at the telephone number when she is not available and  
25 ensure that reports are submitted directly by the testing agency to the Board, as  
26 directed. Any confirmed positive finding shall be reported immediately to the  
27 Board by the program and Respondent shall be considered in violation of  
28 probation.

1 In addition, Respondent, at any time during the period of probation, shall  
2 fully cooperate with the Board or any of its representatives, and shall, when  
3 requested, submit to such tests and samples as the Board or its representatives may  
4 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other  
5 controlled substances.

6 If Respondent has a positive drug screen for any substance not legally  
7 authorized and not reported to the coordinating physician, nurse practitioner, or  
8 physician assistant, and the Board files a petition to revoke probation or an  
9 accusation, the Board may suspend Respondent from practice pending the final  
10 decision on the petition to revoke probation or the accusation. This period of  
11 suspension will not apply to the reduction of this probationary time period.

12 If Respondent fails to participate in a random, biological fluid testing or  
13 drug screening program within the specified time frame, Respondent shall  
14 immediately cease practice and shall not resume practice until notified by the  
15 Board. After taking into account documented evidence of mitigation, if the Board  
16 files a petition to revoke probation or an accusation, the Board may suspend  
17 Respondent from practice pending the final decision on the petition to revoke  
18 probation or the accusation. This period of suspension will not apply to the  
19 reduction of this probationary time period.

20 **D. Therapy or Counseling Program.** Respondent, at her expense, shall  
21 participate in an on-going counseling program until such time as the Board  
22 releases her from this requirement and only upon the recommendation of the  
23 counselor. Written progress reports from the counselor will be required at various  
24 intervals.

25 ///

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28 ///

ACCEPTANCE

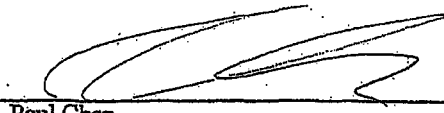
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Paul Chan. I understand the stipulation and the effect it will have on my Applicant for Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 10/05/2012

  
EVANGELINA FUENTEZ  
Respondent

I have read and fully discussed with Respondent Evangelina Fuentez the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10/8/12

  
Paul Chan  
Attorney for Respondent

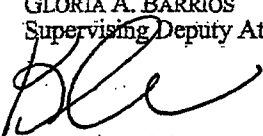
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
GLORIA A. BARRIOS  
Supervising Deputy Attorney General

  
KATHERINE MESSANA  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Statement of Issues No. 2013-30**



1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 KATHERINE MESSANA  
Deputy Attorney General  
4 State Bar No. 272953  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2554  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

Case No. **2013-30**

12 **EVANGELINA FUENTEZ**

**STATEMENT OF ISSUES**

13 Applicant for Registered Nurse License

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely  
19 in her official capacity as the Interim Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs.

21 2. On or about December 16, 2011, the Board of Registered Nursing, Department of  
22 Consumer Affairs received an Application for Licensure by Examination from Evangelina  
23 Fuentez ("Respondent"). On or about November 11, 2011, Evangelina Fuentez certified under  
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
25 application. The Board denied the application on February 17, 2012.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Statement of Issues is brought before the Board of Registered Nursing  
28 ("Board"), Department of Consumer Affairs, under the authority of the following laws. All

1 section references are to the Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 480 of the Code states in pertinent part:

3 " (a) A board may deny a license regulated by this code on the grounds  
4 that the applicant has one of the following:

5 (1) Been convicted of a crime. A conviction within the meaning of this  
6 section means a plea or verdict of guilty or a conviction following a plea of nolo  
7 contendere. Any action that a board is permitted to take following the establishment  
8 of a conviction may be taken when the time for appeal has elapsed, or the judgment  
9 of conviction has been affirmed on appeal, or when an order granting probation is  
10 made suspending the imposition of sentence, irrespective of a subsequent order under  
11 the provisions of Section 1203.4 of the Penal Code.

12 ...

13 (3) (A) Done any act that if done by a licentiate of the business or  
14 profession in question, would be grounds for suspension or revocation of license.

15 (B) The board may deny a license pursuant to this subdivision only if the  
16 crime or act is substantially related to the qualifications, functions, or duties of the  
17 business or profession for which application is made.

18 (b) Notwithstanding any other provision of this code, no person shall be  
19 denied a license solely on the basis that he or she has been convicted of a felony if he  
20 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing  
21 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
22 convicted of a misdemeanor if he or she has met all applicable requirements of the  
23 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
24 person when considering the denial of a license under subdivision (a) of Section 482."

25 5. Section 2761 of the Code states in pertinent part:

26 "The board may take disciplinary action against a certified or licensed  
27 nurse or deny an application for a certificate or license for any of the following:

28 (a) Unprofessional conduct, which includes, but is not limited to, the  
following:

...  
29

30 (d) Violating or attempting to violate, directly or indirectly, or assisting  
31 in or abetting the violating of, or conspiring to violate any provision or term of this  
32 chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

33 ...

34 (f) Conviction of a felony or of any offense substantially related to the  
35 qualifications, functions, and duties of a registered nurse, in which event the record of  
36 the conviction shall be conclusive evidence thereof."

37 6. Section 2762 of the Code states:

38 "In addition to other acts constituting unprofessional conduct within the

1 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
2 person licensed under this chapter to do any of the following:

3 (a) Obtain or possess in violation of law, or prescribe, or except as  
4 directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
5 himself or herself, or furnish or administer to another, any controlled substance as  
6 defined in Division 10 (commencing with Section 11000) of the Health and Safety  
7 Code or any dangerous drug or dangerous device as defined in Section 4022.

8 (b) Use any controlled substance as defined in Division 10 (commencing  
9 with Section 11000) of the Health and Safety Code, or any dangerous drug or  
10 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or  
11 in a manner dangerous or injurious to himself or herself, any other person, or the  
12 public or to the extent that such use impairs his or her ability to conduct with safety to  
13 the public the practice authorized by his or her license.

14 (c) Be convicted of a criminal offense involving the prescription,  
15 consumption, or self-administration of any of the substances described in  
16 subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
17 record pertaining to, the substances described in subdivision (a) of this section, in  
18 which event the record of the conviction is conclusive evidence thereof.

19 (d) Be committed or confined by a court of competent jurisdiction for  
20 intemperate use of or addiction to the use of any of the substances described in  
21 subdivisions (a) and (b) of this section, in which event the court order of commitment  
22 or confinement is prima facie evidence of such commitment or confinement.

23 (e) Falsify, or make grossly incorrect, grossly inconsistent, or  
24 unintelligible entries in any hospital, patient, or other record pertaining to the  
25 substances described in subdivision (a) of this section.”

26 7. Section 490 of the Code provides:

27 “(a) In addition to any other action that a board is permitted to take  
28 against a licensee, a board may suspend or revoke a license on the ground that the  
licensee has been convicted of a crime, if the crime is substantially related to the  
qualifications, functions, or duties of the business or profession for which the license  
was issued.

(b) Notwithstanding any other provision of law, a board may exercise any  
authority to discipline a licensee for conviction of a crime that is independent of the  
authority granted under subdivision (a) only if the crime is substantially related to the  
qualifications, functions, or duties of the business or profession for which the  
licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or  
verdict of guilty or a conviction following a plea of nolo contendere. An action that a  
board is permitted to take following the establishment of a conviction may be taken  
when the time for appeal has elapsed, or the judgment of conviction has been  
affirmed on appeal, or when an order granting probation is made suspending the  
imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the  
Penal Code.

(d) The Legislature hereby finds and declares that the application of this  
section has been made unclear by the holding in *Petropoulos v. Department of Real  
Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a

significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law."

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

#### **REGULATORY PROVISIONS**

9. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

#### **DRUG DEFINITION**

10. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

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substance] and one misdemeanor count of violating Health & Safety Code section 11550(a) [using or being under the influence of a controlled substance] in the criminal proceeding entitled *The People of the State of California v. Evangelina Fuentes* (Super. Ct. of California, County of Santa Clara, 2000, Case No. CC092076). The court sentenced Respondent to 152 days in jail and placed Respondent on three years formal probation with terms and conditions. On or about June 13, 2002, the court granted Respondent's Penal Code section 17(b) motion, reducing the felony conviction to a misdemeanor. The circumstances underlying the conviction are that:

a. On or about November 18, 2000, during a vehicle enforcement stop, San Jose Police Officers contacted Respondent who was the passenger in the vehicle. Respondent had a no bail warrant for her arrest. Officers observed that Respondent displayed the objective signs and symptoms of stimulant influence. During a search of Respondent's purse, officers found a marijuana roach. In a search of the vehicle, officers found methamphetamine. Respondent admitted to using methamphetamine approximately five days before the arrest and that the methamphetamine subsequently found in the vehicle was her responsibility.

## **SECOND CAUSE FOR DENIAL OF APPLICATION**

### **(Unprofessional Conduct)**

14. Respondent's application is subject to denial under section 2761, subdivision (a) of the Code on the grounds of unprofessional conduct in that Respondent obtained and used marijuana and methamphetamine. The conduct is described in more particularity in paragraphs 12 and 13, above, inclusive and herein incorporated by reference.

## **THIRD CAUSE FOR DENIAL OF APPLICATION**

### **(Unprofessional Conduct: Possession of Dangerous Drug/Controlled Substance)**

15. Respondent's application is subject to denial under section 2761, subdivision (a) as defined in section 2762, subdivision (a) of the Code on the grounds of unprofessional conduct in that on or about June 6, 2000, and November 18, 2000, Respondent possessed controlled substances and dangerous drugs in violation of the law. The conduct is described in more particularity in paragraphs 12 and 13, above, inclusive and herein incorporated by reference.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Unprofessional Conduct: Use Dangerous Drug/Controlled Substance)**

3 16. Respondent's application is subject to denial under section 2761, subdivision (a) as  
4 defined in section 2762, subdivision (b) of the Code on the grounds of unprofessional conduct in  
5 that on or about June 6, 2000, and November 18, 2000, Respondent used controlled substances  
6 and dangerous drugs to an extent or in a manner dangerous or injurious to herself. The conduct is  
7 described in more particularity in paragraphs 12 and 13, above, inclusive and herein incorporated  
8 by reference.

9 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

10 **(Criminal Conviction Involving Consumption of Dangerous Drugs/Controlled Substances)**

11 17. Respondent's application is subject to denial under section 2761, subdivision (a) as  
12 defined in section 2762, subdivision (c) of the Code on the grounds of unprofessional conduct in  
13 that on or about June 8, 2000, and July 17, 2000, Respondent was convicted of criminal offenses  
14 involving the consumption of dangerous drugs and controlled substances. The convictions are  
15 described in more particularity in paragraphs 11 through 13, above, inclusive and herein  
16 incorporated by reference.

17 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

18 **(Commitment by Court for Intemperate Use of Dangerous Drugs/Controlled Substances)**

19 18. Respondent's application is subject to denial under section 2761, subdivision (a) as  
20 defined in section 2762, subdivision (d) of the Code on the grounds of unprofessional conduct in  
21 that on or about June 8, 2000, and July 17, 2000, Respondent was committed by the court for the  
22 intemperate use of dangerous drugs and controlled substances. The convictions are described in  
23 more particularity in paragraphs 11 through 13, above, inclusive and herein incorporated by  
24 reference.

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1                                   **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

2                                   **(Conduct Warranting Discipline of Licensee)**

3           19.   Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)  
4 of the Code in that Respondent committed acts that if done by a licentiate of the business or  
5 profession in question, would be grounds for suspension or revocation of said license, as follows:

6               a.   Respondent was convicted of substantially related crimes in violation of section  
7 490 and section 2761, subdivision (f) of the Code.

8               b.   Respondent committed unprofessional conduct in violation of section 2761,  
9 subdivision (a) of the Code.

10              c.   Respondent unlawfully possessed controlled substances and dangerous drugs in  
11 violation of section 2761, subdivision (a) as defined in section 2762, subdivision (a) of the Code.

12              d.   Respondent used controlled substances and dangerous to an extent or in a  
13 manner dangerous or injurious to herself in violation of section 2761, subdivision (a) as defined  
14 in section 2762, subdivision (b) of the Code.

15              e.   Respondent was convicted of criminal offenses involving the consumption of  
16 dangerous drugs and controlled substances in violation of section 2761, subdivision (a) as defined  
17 in section 2762, subdivision (c) of the Code.

18              f.   Respondent was committed by a court for the intemperate use of dangerous  
19 drugs and controlled substances in violation of section 2761, subdivision (a) as defined in section  
20 2762, subdivision (d) of the Code.

21                                   **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

22                                   **(Violation of Provisions of Nursing Practice Act)**

23           20.   Respondent's application is subject to denial under section 2761, subdivision (d) of  
24 the Code in that Respondent violated provisions of the Nursing Practice Act. The violations are  
25 described in paragraphs 11 through 19 above, inclusive and herein incorporated by reference.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Evangelina Fuentez for a Applicant for Registered Nurse License;

2. Taking such other and further action as deemed necessary and proper.

DATED: July 10, 2012

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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